

### § 1030.3

installations, institutions or other similar establishments:

(a) In the State of Illinois:

(1) The counties of:

Boone, Carroll, Cook, De Kalb, Du Page, Jo Daviess (except the city of East Dubuque), Kane, Kendall, Lake, Lee, McHenry, Ogle, Stephenson, Will, Winnebago.

(2) In Whiteside County:

(i) The townships of:

Caloma, Hahnaman, Hopkins, Hume, Jordan, Montmorency, Sterling, Tampico.

(b) In the State of Wisconsin:

(1) The counties of:

Adams, Brown, Calumet, Columbia, Dane, Dodge, Fond du Lac, Forest, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, Kewaunee, La Crosse, Lafayette, Langlade, Lincoln, Manitowoc, Marquette, Menominee, Milwaukee, Monroe, Oconto, Oneida, Outagamie, Ozaukee, Portage, Racine, Richland, Rock, Sauk, Shawano, Sheboygan, Vernon, Vilas, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago.

(2) In Door County the city of Sturgeon Bay;

(3) In Marathon County:

(i) The towns of:

Bergen, Berlin, Bevent, Easton, Elderon, Franzen, Guenther, Harrison, Hewitt, Knowlton, Kronenwetter, Maine, Marathon, Mosinee, Norrie, Plover, Reid, Rib Mountain, Ringle, Stettin, Texas, Wausau, Weston.

(ii) The villages of:

Brokaw, Elderon, Hatley, Marathon, Rothschild.

(iii) The cities of:

Mosinee, Schofield, Wausau.

(4) In Wood County:

(i) The towns of:

Cranmoor, Grand Rapids, Port Edwards, Rudolph, Saratoga, Seneca.

(ii) The villages of:

Biron, Port Edwards.

(iii) The cities of:

Nekoosa, Wisconsin Rapids.

[39 FR 15405, May 3, 1974, as amended at 54 FR 53526, Dec. 29, 1989]

### § 1030.3 Route disposition.

*Route disposition* means a delivery (including disposition from a retail

### 7 CFR Ch. X (1–1–99 Edition)

plant store) of any fluid milk product classified as Class I milk to a retail or wholesale outlet other than a milk plant. Disposition of a plant through a vendor or through a distribution point shall be considered a route delivery at the location of the wholesale or retail outlet to which delivery is made.

### § 1030.4 Plant.

*Plant* means a building together with its facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment that has facilities adequate for cleaning tank trucks, is approved by an appropriate health authority, at which milk is received from dairy farmers or other plants, and at which milk is processed and/or shipped to another plant.

[53 FR 26759, July 15, 1988]

### § 1030.5 Distributing plant.

*Distributing plant* means a plant from which there is route disposition in the marketing area, either directly or through another plant, of a Grade A fluid milk product that is processed or packaged in such plant during the month.

### § 1030.6 Supply plant.

*Supply plant* means a plant at which Grade A milk is physically unloaded into the plant or a tank truck in the plant and is either processed and/or shipped during the month to another milk processing plant, except that any plant located on the premises of a pool distributing plant pursuant to § 1030.7(a) shall not be considered a supply plant unless it is located in a building that is entirely separate from the distributing plant.

[53 FR 26759, July 15, 1988]

### § 1030.7 Pool plant.

Except as provided in paragraph (d) of this section, *pool plant* means:

(a) A distributing plant or unit described in paragraph (a)(4) of this section from which during the month the disposition of fluid milk products specified in paragraph (a)(2) of this section is not less than 10 percent of the receipts specified in paragraph (a)(1) of

this section and from which the disposition of fluid milk products specified in paragraph (a)(3) of this section as a percent of the receipts specified in paragraph (a)(1) of this section is not less than 45 percent in each of the months of September, October, November, and December, 35 percent in each of the months of January, February, March, and August, and 30 percent in all other months.

(1) The total Grade A fluid milk products, except filled milk, received during the month at such plant, including producer milk diverted to nonpool plants and to pool supply plants pursuant to § 1030.13, but excluding producer milk diverted to other pool distributing plants, receipts of fluid milk products in exempt milk, packaged fluid milk products and bulk fluid milk products by agreement for Class II and Class III uses from other pool distributing plants, and receipts from other order plants and unregulated supply plants which are assigned pursuant to § 1030.44(a)(8) (i)(a) and (ii) and the corresponding step of § 1030.44(b).

(2) Packaged fluid milk products, except filled milk, disposed of as either route disposition in the marketing area or moved to other plants from which it is disposed of as route disposition in the marketing area. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(3) Packaged fluid milk products, except filled milk, disposed of as either route disposition or moved to other plants. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(4) A unit consisting of at least one distributing plant and one or more additional plants of a handler at which milk is processed and packaged or manufactured shall be considered as one plant for the purpose of meeting the requirements of this paragraph if all such plants are located within the State of Wisconsin or that portion of the marketing area within the State of Illinois, and if, prior to the first day of the month, the handler operating such plants has filed a written request for such plants to be considered a unit with the market administrator.

(b) A supply plant or unit of supply plants described in paragraph (b)(6) of this section from which the quantity of fluid milk products (except filled milk) and condensed skim milk shipped and received and physically unloaded into plants described in paragraph (b)(2) of this section as a percent of the Grade A milk received at the plant(s) from dairy farmers (except dairy farmers described in § 1030.12(b)) and handlers described in § 1030.9(c), including producer milk diverted pursuant to § 1030.13, but excluding packaged fluid milk products that are disposed of from such plant(s) as route disposition, is not less than 3 percent for the months of January through August, and 5 percent for the months of September through December for individual plants and 6 percent and 10 percent, respectively, for any unit of plants, subject to the following conditions:

(1) A plant that was a pool plant pursuant to this paragraph during each of the months of August through January shall be a pool plant for each of the following months of February through July.

(2) Qualifying shipments pursuant to this paragraph may be made to the following plants, except as provided in paragraph (b)(2)(v) of this section:

(i) Pool plants described in paragraph (a) of this section;

(ii) Plants of producer-handlers;

(iii) Partially regulated distributing plants, except that credit for such shipments shall be limited to the amount of such milk which receives a Class I classification at the transferee plant;

(iv) Distributing plants fully regulated under other Federal orders, except that credit for shipments to such plants, shall be limited to the quantity shipped to pool distributing plants during the month and credits for shipments to other order plants shall not include any such shipments made on the basis of agreed-upon Class II or Class III utilization; and

(v) Whenever the authority provided in paragraph (b)(5) of this section is applied to increase the shipping requirements specified in this section, only shipments described in paragraph (b)(2)(i) of this section shall count as qualifying shipments for the purpose of meeting the increased requirements.

(3) The operator of a supply plant may include as qualifying shipments deliveries to pool distributing plants directly from farms of producers pursuant to § 1030.13(d).

(4) The quantity of condensed skim milk and fluid milk products moved (including milk diverted) from supply plants to each pool plant described in paragraph (a) or (c) of this section that shall count towards meeting the shipping requirements of this paragraph shall be a net quantity assignable at each such pool plant pro rata to supply plants in accordance with total receipts from such plants. The net quantity shall be computed by subtracting from the quantity of fluid milk products and condensed skim milk received from supply plants the following:

(i) The quantity of condensed skim milk not disposed of in a fluid milk product and the quantity of fluid milk products in the form of bulk milk and skim milk moved from the pool distributing plant to pool supply plants plus any such bulk shipments to nonpool plants as Class II or Class III milk other than:

(A) Transfers or diversions classified pursuant to § 1030.40(b)(3); and

(B) Transfers or diversions on New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving, Christmas, and on any Saturday if no milk is received at the pool distributing plant from a supply plant, in an amount not in excess of 120 percent of the average daily receipts of producer milk pursuant to § 1030.13(a) at the plant during the prior month, less the quantity of producer milk diverted pursuant to § 1030.13(d) on such day. If no producer milk was received in the distributing plant during the prior month, the average daily receipts during the current month shall be used for this purpose; and

(ii) If milk is diverted from the pool distributing plant on the date of the receipts from the supply plant, the quantity so diverted, except any diversion of milk (not to exceed 3 days' production of any individual producer) made because of any emergency situation such as a breakdown of trucking equipment or hazardous road conditions if such emergency is reported to the market administrator.

(5) The shipping requirements of this paragraph may be increased or decreased if found necessary to obtain needed shipments or to prevent uneconomic shipments as follows, subject in either case to the conditions specified to paragraph (b)(5)(iii) of this section.

(i) The market administrator may, for a period of up to three months, increase or decrease the shipping requirements of this paragraph by up to two percentage points;

(ii) The Director of the Dairy Division may increase the shipping requirements of this paragraph by up to five percentage points or decrease them by up to ten percentage points;

(iii) Before making a finding that a change is necessary for the purposes set forth in this section, the market administrator or the Director of the Dairy Division shall investigate the need for revision, either on such person's own initiative or at the request of interested persons. If such investigation shows that a revision might be appropriate, a notice shall be issued stating that revision is being considered and inviting data, views, and arguments. If a plant that would not otherwise qualify as a pool plant during the month does qualify as a pool plant because of a reduction in shipping requirements pursuant to this paragraph, such plant shall be a nonpool plant for such month if the operator of the plant files a written request for nonpool status with the market administrator on or before the first day of the following month. If an increase is required in any month of February through July, the increase shall also apply to any supply plant that has pool status for the month pursuant to paragraph (b)(1) of this section.

(6) Two or more plants shall be considered a unit for the purpose of meeting the requirements of this paragraph if the following conditions are met:

(i) The plants are located within the State of Wisconsin or within that portion of the State of Illinois within the marketing area;

(ii) The plants included in the unit are owned or fully leased and operated by the handler establishing the unit and such plants were pool plants during the month prior to being included in a unit. Two or more handlers may

establish a unit of designated plants by certifying to the market administrator a marketing agreement specifying the plants to be considered as a unit, and specifying which handler will be responsible for qualification of the unit. With regard to any leased plants included in a unit, the handler that leases a plant(s) and is a party to a marketing agreement with respect to plants included in a unit, shall satisfy the market administrator that such handler:

(A) Is responsible pursuant to § 1030.73 for payments to producers whose milk is delivered to the leased plant or diverted therefrom by the handler;

(B) Controls and operates the leased plant; and

(C) Maintains in its books and records the accounts of the leased plant(s), including, but not limited to, records reflecting the receipt, sale, collection of proceeds, the gross value of the payrolls for all producer milk pooled by the handler operating the leased plant, and employee payroll or independent contractor records reflecting the handler's financial responsibility for operation of the plant.

(iii) The handler or handlers establishing the unit submits a written request to the market administrator on or before July 15 requesting that such plants qualify as a unit for the period of August through July of the following year. In the months of February through July, a unit shall not include any plant that was not a pool plant each month of the preceding period of August through January. Each plant that qualifies as a pool plant within a unit shall continue each month as a plant in the unit through the following July unless the plant subsequently fails to qualify for pooling or the handler or handlers establishing the unit submits a written request to the market administrator that the plant be deleted from the unit or that the unit be discontinued. Any plant that has been so deleted from a unit, or that has failed to qualify in any month, will not be part of the unit for the remaining months through July. The handler or handlers that establish a unit may add a plant operated by such handler or handlers to a unit, if such plant has been a pool plant each prior month of

the current unit-operating period (August through July) and would otherwise be eligible to be in a unit, upon submission of a written request to the market administrator. Such plant will remain in the unit through the following July. Written requests to the market administrator to either delete a plant from the unit or to add a plant to the unit shall be submitted to the market administrator on or before the 15th day of the month preceding the month that such change will be effective. In the event of an ownership change or business failure of a handler that is a participant in a unit, the unit may be reorganized to reflect such changes by submitting a written request to file a new marketing agreement with the market administrator;

(iv) If a unit fails to qualify under the requirements of this paragraph, the handler responsible for qualifying the unit shall notify the market administrator which plant or plants will be deleted from the unit so that the remaining plants may be pooled as a unit. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the unit and continuing up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the unit; and

(v) Each plant in a unit shall ship to a plant or plants pursuant to paragraph (a) or (c) of this section not less than 3 percent of the plant's receipts of milk from producers or 47,000 pounds, whichever is less, of condensed skim milk or fluid milk products in each of five months during the period of August through January, subject to the provisions of paragraph (b)(4) of this section. If the unit shipping requirements are reduced to zero pursuant to paragraph (b)(5)(ii) of this section, shipments by each plant in a unit shall not be required.

(c) Any plant that qualifies as a pool plant in each of the immediately preceding three months pursuant to paragraph (a) of this section or the shipping percentages in paragraph (b) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control

of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood), fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than two consecutive months.

(d) The term “pool plant” shall not apply to the following plants:

(1) A producer-handler plant or exempt distributing plant;

(2) A plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless it is qualified as a pool plant pursuant to paragraph (a), (b) or (c) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is so disposed of in the marketing area regulated pursuant to such other order; and

(3) That portion of a plant that is physically separated from the Grade A portion of such plant, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

[53 FR 26759, July 15, 1988; 53 FR 27798, July 22, 1988, as amended at 56 FR 66954, Dec. 27, 1991; 58 FR 48954, Sept. 21, 1993; 59 FR 44033, Aug. 26, 1994]

#### § 1030.8 Nonpool plant.

*Nonpool plant* means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) *Other order plant* means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) *Partially regulated distributing plant* means a nonpool plant that is not an other order plant, a producer-hand-

ler plant, or an exempt distributing plant and from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) *Unregulated supply plant* means a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant from which fluid milk products are shipped during the month to a pool plant.

(e) *Exempt distributing plant* means a distributing plant operated by a governmental agency.

#### § 1030.9 Handler.

*Handler* means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it causes to be diverted from a pool plant of another handler pursuant to § 1030.13 for the account of such cooperative association;

(c) Any cooperative association with respect to milk of its producers which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant; or

(g) Any person in his capacity as a broker negotiating a purchase or sale of fluid milk products or fluid cream products from or to a person described in paragraph (a) or (d) of this section.

[39 FR 15405, May 3, 1974, as amended at 42 FR 38582, July 29, 1977]

#### § 1030.10 Producer-handler.

*Producer-handler* means any person who operates a dairy farm and a distributing plant and who has route disposition in the marketing area of only fluid milk products of such person's own production or fluid milk products received from pool plants: *Provided*, That such person provides proof satisfactory to the market administrator that the care and management of all